

AMENDED IN SENATE SEPTEMBER 2, 2003

AMENDED IN SENATE JULY 16, 2003

AMENDED IN SENATE JULY 7, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 313

Introduced by Assembly Member Dutra

February 7, 2003

An act to amend Section 2948.5 of the Civil Code, and to amend Section 50204 of, and to repeal Section 50707 of, the Financial Code, relating to mortgage lending.

LEGISLATIVE COUNSEL'S DIGEST

AB 313, as amended, Dutra. Mortgage lending.

(1) Existing law provides that a borrower under a note secured by a mortgage or deed of trust on one to four residential units is not required to pay interest on a principal obligation for more than one day prior to recording of the mortgage or deed of trust.

This bill would instead provide that a borrower under these circumstances would not be required to pay interest for more than one day prior to the date that the loan proceeds are disbursed out of escrow or disbursed to the borrower or to another party on behalf of the borrower. The bill would make other conforming changes.

(2) The California Residential Mortgage Lending Act provides for licensing and regulation of residential mortgage lenders by the Commissioner of Corporations. These provisions will be repealed on June 30, 2005.

This bill would delete the repeal provision, thereby extending the act indefinitely.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2948.5 of the Civil Code is amended to
2 read:

3 2948.5. (a) A borrower shall not be required to pay interest
4 on a principal obligation under a promissory note secured by a
5 mortgage or deed of trust on real property improved with between
6 one to four residential dwelling units for any period that meets any
7 of the following requirements:

8 (1) Is more than one day prior to the date that the loan proceeds
9 are disbursed from escrow.

10 (2) In the event of no escrow, if a request for recording is made
11 in connection with the disbursement, is more than one day prior to
12 the date the loan proceeds are disbursed to the borrower, to a third
13 party on behalf of the borrower, or to the lender to satisfy an
14 existing obligation of the borrower.

15 (3) In all other circumstances where there is no escrow and no
16 request for recording, is ~~more than one day~~ prior to the date funds
17 are disbursed to the borrower, to a third party on behalf of the
18 borrower, or to the lender to satisfy an existing obligation of the
19 borrower.

20 (b) Interest may commence to accrue on the business day
21 immediately preceding the day of disbursement, for obligations
22 described in paragraphs (1) and (2) of subdivision (a) if both of the
23 following occur:

24 (1) The borrower affirmatively requests, and the lender agrees,
25 that the disbursement will occur on Monday, or a day immediately
26 following a bank holiday.

27 (2) The following information is disclosed to the borrower in
28 writing: (A) the amount of additional per diem interest charged to
29 facilitate disbursement on Monday or the day following a holiday,
30 as the case may be, and (B) that it may be possible to avoid the
31 additional per diem interest charge by disbursing the loan proceeds
32 on a day immediately following a business day. This disclosure
33 shall be provided to the borrower and acknowledged by the



1 borrower by signing a copy of the disclosure document prior to
2 placing funds in escrow.

3 (c) This section does not apply to a loan that is subject to
4 subdivision (c) of Section 10242 of the Business and Professions
5 Code.

6 SEC. 2. Section 50204 of the Financial Code is amended to
7 read:

8 50204. A licensee may not do any of the following:

9 (a) Disburse the mortgage loan proceeds in a form other than
10 direct deposit to the borrower's or borrower's designee's account,
11 wire, bank or certified check, ACH funds transfer, or attorney's
12 check drawn on a trust account. An entity may apply to the
13 commissioner for a waiver of the requirements of this subdivision
14 by demonstrating, in a letter application, that it has adopted or will
15 adopt another method of disbursement of loan proceeds that will
16 satisfy the purposes of this subdivision.

17 (b) Fail to disburse funds in accordance with a commitment to
18 make a mortgage loan that is accepted by the applicant.

19 (c) Accept fees at closing that are not disclosed to the borrower
20 on the federal HUD-1 Settlement Statement.

21 (d) Commit an act in violation of Section 2941 of the Civil
22 Code.

23 (e) Obtain or induce an agreement or other instrument in which
24 blanks are left to be filled in after execution.

25 (f) Intentionally delay closing of a mortgage loan for the sole
26 purpose of increasing interest, costs, fees, or charges payable by
27 the borrower.

28 (g) Engage in fraudulent home mortgage underwriting
29 practices.

30 (h) Make payment of any kind, whether directly or indirectly,
31 to an in-house or fee appraiser of a government or private money
32 lending agency, with which an application for a home mortgage
33 has been filed, for the purpose of influencing the independent
34 judgment of the appraiser with respect to the value of real estate
35 that is to be covered by the home mortgage.

36 (i) Engage in any acts in violation of Section 17200 or 17500
37 of the Business and Professions Code.

38 (j) Knowingly misrepresent, circumvent, or conceal, through
39 subterfuge or device, any material aspect or information regarding
40 a transaction to which it is a party.

1 (k) Do an act, whether of the same or a different character than
2 specified in this section, that constitutes fraud or dishonest
3 dealings.

4 (l) Sell more than eight loans in a calendar year made under the
5 authority of this license to a person who is not an institutional
6 investor.

7 (m) Commit an act in violation of Section 1695.13 of the Civil
8 Code.

9 (n) Make or service a loan that is not a residential mortgage
10 loan under the authority of the license.

11 (o) Commit an act in violation of Section 2948.5 of the Civil
12 Code. Evidence of compliance with Section 2948.5 of the Civil
13 Code may be evidenced by (1) a certification executed by the
14 licensee, at no cost to the borrower, pursuant to Section 2015.5 of
15 the Code of Civil Procedure, or (2) other evidence in the loan file
16 acceptable to the commissioner.

17 SEC. 3. Section 50707 of the Financial Code is repealed.

